

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arlyn Rodriguez	Team: Team # 3	CCRB Case #: 201305988	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/29/2013 1:23 AM	Location of Incident: In front of § 87(2)(b)	Precinct: 44	18 Mo. SOL 12/29/2014	EO SOL 12/29/2014	
Date/Time CV Reported Sat, 06/29/2013 1:56 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/05/2013 1:21 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Wilfredo Benitez	15506	947459	044 PCT
2. POM Kenneth Hines	15214	937822	044 PCT
3. An officer			044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Shaun Garrett	02245	926868	044 PCT
2. POM Ramon Melendez	29075	916207	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Wilfredo Benitez	Discourtesy: PO Wilfredo Benitez spoke rudely to § 87(2)(b) and § 87(2)(b)	
B.POM Wilfredo Benitez	Force: PO Wilfredo Benitez used physical force against § 87(2)(b)	
C.POM Kenneth Hines	Force: PO Kenneth Hines used pepper spray against § 87(2)(b) and § 87(2)(b)	
D. An officer	Force: An officer used pepper spray against § 87(2)(b)	
E. An officer	Discourtesy: An officer spoke rudely to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

Case Summary

On June 29, 2013, § 87(2)(b) filed this complaint via telephone with IAB, generating IAB log number 13-28035. On July 5, 2013, this complaint was forwarded to the CCRB.

On June 29, 2013, at 1:23 a.m., PO Wilfredo Benitez of the 44th Precinct arrested § 87(2)(b) and § 87(2)(b). The following allegations resulted from the encounter:

Allegation A – Discourtesy: PO Wilfredo Benitez spoke rudely to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b)

§ 87(2)(g)

Allegation B – Force: PO Wilfredo Benitez used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation C – Force: PO Kenneth Hines used pepper spray against § 87(2)(b) and

§ 87(2)(b)

§ 87(2)(g)

Allegation D – Force: An officer used pepper spray against § 87(2)(b)

§ 87(2)(g)

Allegation E – Discourtesy: An officer spoke rudely to § 87(2)(b)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

This case was originally assigned to Investigator Daniel DiRocco but was reassigned to the undersigned investigator on August 27, 2013. Mediation was not offered in this case § 87(2)(g)

Results of Investigation

Video Footage

On August 12, 2013, § 87(2)(b) provided the CCRB with video footage that she recorded of the incident on her mobile phone. The video is 54 seconds long and yelling is heard throughout the video. The contents of the video are summarized below (encl. B8).

00:00 - 00:03 – PO Melendez is shown on the screen shaking what was identified via the investigation as a pepper spray canister. Someone is yelling, “How you going to that? Why you going to do that? How you going to do that?”

00:04 - 00:14 – “That, that is illegal. That is illegal! Illegal! Illegal! Eee-fucking-legal! Eee-fucking-legal!” Meanwhile, PO Benitez (left-hand) hands PO Hines (right-hand) an item, which was identified via the investigation as a pepper spray canister. PO Hines shakes the can.

00:15 – A spray is heard, which was identified via the investigation as pepper spray.

00:16 - 00:22 – Someone says, “Clear the block. Clear the block.” People begin walking away from the officers

00:23 - 00:27 – Someone says, “Clear the corner. Clear the corner.” Clanking is heard and a white and a green umbrella, which is on the ground, appears on the screen.

00:28 - 00:36 – Someone says, “Mira!,” which in Spanish means “Look!” and “Relax, mommy, relax.” The camera starts moving around rapidly and records a red brick wall.

00:37 - 00:54 – The camera continues to record a red brick wall. Someone says, “Go inside. Go inside Entre para dentro,” which in Spanish means, “Enter inside.”

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a Hispanic woman who was § 87(2)(b) old at the time of the incident. She is 5’3” tall and 170 pounds. § 87(2)(b) has brown hair and brown eyes.

CCRB Statement

On August 15, 2013, § 87(2)(b) was interviewed at the CCRB (encl. C1 – C7).

On June 28, 2013, at approximately 5 p.m., § 87(2)(b) along with many of her family members, friends, and neighbors, assembled on the sidewalk in front of § 87(2)(b) in the Bronx. The group had tables on the sidewalk, right next to the building, and was playing dominoes. Music was playing at a “decent” level (not too loud) and individuals were consuming alcohol on the sidewalk. Even though many people were outside, there was sufficient room for pedestrians to pass.

Overall, there were between fifteen to twenty people at the location. This included the following: § 87(2)(b) § 87(2)(b) s cousin), § 87(2)(b) s mother and father, § 87(2)(b) and § 87(2)(b) § 87(2)(b) s § 87(2)(b) -old sister), § 87(2)(b) § 87(2)(b) s mother), § 87(2)(b) § 87(2)(b) s stepfather), § 87(2)(b) § 87(2)(b) s aunt), § 87(2)(b) s four children (ages § 87(2)(b)), § 87(2)(b) (a neighbor), § 87(2)(b) s husband (name unknown), and § 87(2)(b) s § 87(2)(b) -old child. The investigation determined that § 87(2)(b) s friend), § 87(2)(b) § 87(2)(b) s cousin), § 87(2)(b) (last name unknown; § 87(2)(b) s friend), § 87(2)(b) § 87(2)(b) s uncle), and § 87(2)(b) § 87(2)(b) s § 87(2)(b) -year-old son) were also present during the incident.

On June 29, 2013, at approximately 1:23 a.m., § 87(2)(b) entered § 87(2)(b) s apartment, § 87(2)(b) to use the bathroom. Afterward, as she was about to exit the building, she looked through the ground floor window and saw that police officers were outside.

Immediately, she walked outside and observed § 87(2)(b) on the street arguing with an officer who was identified by the investigation as PO Wilfredo Benitez of the 44th Precinct. § 87(2)(b) was protesting § 87(2)(b) s arrest. § 87(2)(b) did not witness § 87(2)(b) s arrest.

PO Benitez said that he was “taking” § 87(2)(b) and reached towards her. In response, § 87(2)(b) took a step back and said, “Don’t touch me.” Suddenly, about four additional officers approached her. Collectively, these officers grabbed her arms, placed them behind her back, and handcuffed her. § 87(2)(b) stiffened her arms, but the officers were able to successfully place her in handcuffs. The officers did not do anything else to her.

As the above was occurring, § 87(2)(b) was arguing with an unidentified officer. She described the officer as a Hispanic man in his early-30s with a medium build and short brown hair. She was not able to describe him in any further detail. She was about five feet away from him, recording him with her cell phone. § 87(2)(b) repeatedly yelled at the officer, stating that

she would report the officers for unjustly arresting § 87(2)(b). In response, that officer repeatedly told her to go inside, which she did not do.

§ 87(2)(b) was then pepper sprayed by an officer determined by the investigation as PO Kenneth Hines of the 44th Precinct. § 87(2)(b) then went into the building to flush out her eyes. While inside, § 87(2)(b) encountered § 87(2)(b) whom had also been pepper sprayed. However, § 87(2)(b) did not see § 87(2)(b) being pepper sprayed. § 87(2)(b) subsequently used cold water to flush her eyes. She did not seek medical treatment and was not summonsed or arrested.

§ 87(2)(b) heard, but did not see, that § 87(2)(b) was slapped by one of the officers before she initially came outside.

Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of the incident. He is a Hispanic man who is 6'2" tall and weighs 197 pounds. He has black hair and brown eyes.
- § 87(2)(b)
- § 87(2)(b) is § 87(2)(b)'s cousin.

CCRB Statement

On September 5, 2013, § 87(2)(b) was interviewed at the CCRB (encl. C8 – C13).

At the time and place of occurrence, § 87(2)(b) and his family, friends, and neighbors were packing up their belongings after a family gathering. Two officers, PO Wilfredo Benitez and his partner, identified via the investigation as PO Ramon Melendez, of the 44th Precinct arrived on the scene in a marked RMP.

PO Melendez parked on the corner of West 168th Street and University Avenue and immediately called for backup. PO Melendez and PO Benitez remained in the RMP and stared at § 87(2)(b)'s family and friends. § 87(2)(b) began recording the officers in the RMP.

For approximately five minutes, the officers looked at the crowd, focusing on § 87(2)(b) and § 87(2)(b) and conversed with one another. As the officers looked at the crowd, the members of the crowd continued to pack up. At one point, § 87(2)(b) approached the RMP. As a result, PO Benitez told § 87(2)(b) to step away from the RMP and he complied. PO Benitez and PO Melendez waited in their RMP for additional officers to arrive.

Two to three minutes later, approximately ten additional police cars, some marked and some unmarked, arrived on the scene. More than twenty officers were on the scene. The officers told the crowd to go inside.

§ 87(2)(b) stated they could not be arrested for being on the street, as they were not doing anything wrong. Subsequently, PO Benitez handcuffed § 87(2)(b). There was no struggle in arresting § 87(2)(b) – in fact, he voluntarily placed his arms behind his back to allow PO Benitez to handcuff him.

§ 87(2)(b) recorded § 87(2)(b)'s arrest. As she recorded, PO Benitez told her, "Get that camera out my fucking face," § 87(2)(b) replied, "Why? I'm not doing anything wrong." Four officers approached § 87(2)(b) confiscated her phone, and handcuffed her. As § 87(2)(b) was being arrested, her § 87(2)(b) old son § 87(2)(b) stood next to her.

§ 87(2)(b) approached § 87(2)(b) Jr. to remove him from the scene. As § 87(2)(b) approached § 87(2)(b) PO Benitez told § 87(2)(b) twice, "Get the fuck out the way – move, move!" In response, § 87(2)(b) told PO Benitez to wait, as he was trying to grab his cousin. Consequently, PO Benitez pushed § 87(2)(b) but § 87(2)(b) planted his feet firmly on the ground, causing him to step back only a few inches.

PO Benitez pushed § 87(2)(b) again using both of his hands, causing § 87(2)(b) to land against a wall. Subsequently, PO Benitez attempted to slap § 87(2)(b) with an open palm. PO Benitez aimed for the left side of § 87(2)(b)'s face, but missed, and lightly grazed his face instead. PO Benitez attempted to slap § 87(2)(b) a second time and, that time, slapped him on left

cheek. § 87(2)(b) did not sustain any injuries from the physical interaction he had with PO Benitez.

In an attempt to aid § 87(2)(b) § 87(2)(b)'s friend § 87(2)(b) whose last name is unknown, approached PO Benitez and told him, "Yo! What the fuck? He's a minor!" Subsequently, § 87(2)(b) pushed PO Benitez. In response, PO Benitez pushed § 87(2)(b) against a wall and handcuffed him.

At one point, § 87(2)(b) was also arrested by PO Melendez and three other officers. When officers handcuffed one of her wrists, she pulled her arm back, as to avoid being arrested. § 87(2)(b) later learned that, as a result of the struggle, the stitches § 87(2)(b) had in her vagina came off. She later received medical treatment for the stitches. Officers stated that § 87(2)(b) assaulted an officer, but § 87(2)(b) did not witness her do so.

§ 87(2)(b) and some members of his family were in one corner and an unidentified officer, PO1, ordered them to step back. § 87(2)(b) described PO1 as a 32-year-old white man with a muscular build, straight black hair, approximately 6'4" tall, and dressed in uniform.

§ 87(2)(b) told PO1 to wait, as he needed retrieve something from the ground. In response, PO1 dispensed pepper spray, directing it toward § 87(2)(b). § 87(2)(b) stepped back and, thus, only a small amount of pepper spray landed on the side of his face.

Moments later, PO1 dispensed pepper spray a second time, but did not spray it toward anyone in particular. Pepper spray landed on § 87(2)(b)'s face. PO1 dispensed the pepper spray a third time and some of it landed on § 87(2)(b)'s face.

Immediately thereafter, PO1 pushed § 87(2)(b)'s chest, as he did not step back after PO1 dispensed the pepper spray. § 87(2)(b) repeatedly asked PO1 why he pushed him. § 87(2)(b)'s wife, § 87(2)(b) grabbed her husband and brought him inside the apartment to calm him down. PO1 told § 87(2)(b) "You little tough guy; you little bitch."

§ 87(2)(b) recorded the incident. When officers observed that she was recording, they left the scene. Approximately twenty minutes after the officers left, § 87(2)(b) and § 87(2)(b) arrived at the 44th Precinct stationhouse and asked to speak to a supervisor. At the stationhouse, they saw all of the uniformed officers that were on the scene. PO1 told them to leave the stationhouse and they complied. § 87(2)(b) was released at that time.

Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of the incident. He is a Hispanic man who is 5'8" tall and weighs 195 pounds. He has black hair and brown eyes.
- § 87(2)(b) is § 87(2)(b)'s father and § 87(2)(b)'s uncle.

CCRB Statement

On September 6, 2013, § 87(2)(b) was interviewed at the CCRB (encl. C14 – C17). § 87(2)(g) Only additions and exceptions are noted below.

§ 87(2)(b) and others in his family, who he could not specify, were consuming alcohol. When PO Benitez and his partner, identified via the investigation as PO Ramon Melendez, arrived on the scene, over the loudspeaker, PO Benitez stated: "Party's over," and ordered everyone to leave.

§ 87(2)(b) approached the RMP and asked PO Benitez and PO Melendez to explain why they were doing wrong. In response, PO Benitez stated, "Get the fuck away of the car! Get away from the car!" § 87(2)(b) said he was not doing anything wrong and moved out of the way.

Approximately five minutes later, ten to fifteen police vehicles, and more than thirty officers, arrived on the scene. Officers yelled at the members of the crowd and stated that they had to move or they would be arrested.

PO Benitez and PO Melendez ordered the members of the crowd to leave and warned them that, if they failed to do so, arrests would have to be made. Subsequently, PO Benitez and PO Melendez took out their pepper spray canisters and dispensed pepper spray across the air against the crowd. Pepper spray fell on § 87(2)(b)'s face.

§ 87(2)(b) recorded the incident on her phone and was arrested. § 87(2)(b) led § 87(2)(b) into his residence. When § 87(2)(b) returned outside, he spoke with § 87(2)(b) who told him that PO Benitez slammed § 87(2)(b) against the wall and slapped his face. § 87(2)(b) confirmed that PO Benitez "touched him," but did not hit him hard. § 87(2)(b) told PO Benitez that § 87(2)(b) is a minor. PO Benitez replied, "Shut the fuck up – I can arrest you." Subsequently, PO Benitez arrested § 87(2)(b). A prisoner van arrived on the scene and those who were arrested, § 87(2)(b) and § 87(2)(b) were transported to the 44th Precinct stationhouse.

Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of the incident. She is a Hispanic young woman who is 5'5" tall and weighs 130 pounds. She has brown hair and brown eyes.
- § 87(2)(b) is § 87(2)(b)'s sister.

CCRB Statement

On August 6, 2013, § 87(2)(b) was interviewed at the CCRB (encl. C18 – C22). § 87(2)(g) Only additions and exceptions are noted below.

When PO Benitez and his partner, identified via the investigation as PO Ramon Melendez, arrived on the scene, from their RMP they stated, "The party's over! You got to put your stuff inside." Accordingly, § 87(2)(b) and other members of the crowd began bringing chairs inside the apartment. No one approached the RMP.

Approximately fifteen minutes later, approximately fifteen additional officers dressed in uniform arrived on the scene. At that time, PO Benitez and PO Melendez exited their RMP and § 87(2)(b) returned outside to pick up more chairs.

PO Benitez asked the members of the crowd why they were not putting their belongings away and began pushing members of the crowd away. § 87(2)(b) was not able to specify who PO Benitez pushed. § 87(2)(b) did not hear PO Benitez use any profane words during the incident.

Officers arrested § 87(2)(b) and a man identified via the investigation as § 87(2)(b). When PO Benitez attempted to handcuff § 87(2)(b) she told him not to touch her. Three additional officers approached § 87(2)(b) and assisted in her apprehension.

Subsequently, an unidentified white officer passed his pepper spray canister to PO Benitez. PO Benitez told everyone to get back and shook the can. Afterward, he dispensed pepper spray across the air and spray landed on § 87(2)(b) and § 87(2)(b)'s eyes. Some spray landed on § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) started bringing his umbrella inside of the apartment and looked back at PO Benitez. Suddenly, PO Benitez pushed § 87(2)(b) and slapped him. § 87(2)(b) watched § 87(2)(b) from the building's front steps, which were only a few feet from § 87(2)(b).

Witness: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of the incident. She is a Hispanic woman who is 5'4" tall and weighs 165 pounds. She has brown hair and brown eyes.
- § 87(2)(b) is § 87(2)(b)'s mother.

CCRB Statement

On September 6 2013, § 87(2)(b) was interviewed at the CCRB (encl. C23 – C26) § 87(2)(b). Only additions and exceptions are noted below.

When PO Benitez and his partner, identified via the investigation as PO Ramon Melendez, arrived on the scene, they told the crowd, “Move! Move!” Thus, § 87(2)(b) her husband § 87(2)(b) and their daughters § 87(2)(b) and § 87(2)(b) went inside the apartment. The officers ordered the crowd several times to move. As a result, members of the crowd began gathering their belongings and returning chairs to the apartment.

A few moments later, § 87(2)(b) who was inside of the apartment, heard people yelling. As a result, she, § 87(2)(b) and § 87(2)(b) returned outside.

They observed five to six marked police vehicles parked outside. Approximately twenty police officers dressed in uniform were on the scene. § 87(2)(b) and a man identified via the investigation as § 87(2)(b) were being arrested, people yelled at the officers. § 87(2)(b) and § 87(2)(b) went inside the apartment and watched the incident through the window.

At that time, PO Benitez passed a pepper spray canister to PO Melendez. PO Melendez put on gloves and dispensed pepper spray all over the air. Pepper spray landed on § 87(2)(b) s eyes. A small amount fell on § 87(2)(b) s eyes.

Shortly thereafter, the officers left the scene with the arrestees: § 87(2)(b) and “§ 87(2)(b)” who was identified via the investigation as § 87(2)(b) and § 87(2)(b) went to the 44th Precinct stationhouse. The officers ignored them and told them, “Get out.” The officers did not push any of the individuals.

Witness: § 87(2)(b)

§ 87(2)(b) was § 87(2)(b) old at the time of the incident. He is a Hispanic man who is 5’11” tall and weighs 150 pounds. He has black hair and brown eyes.

- § 87(2)(b) is § 87(2)(b) s cousin.

CCRB Statement

On September 6, 2013, § 87(2)(b) was interviewed at the CCRB (encl. C27 – C30). § 87(2)(g) Only additions and exceptions are noted below.

After § 87(2)(b) and § 87(2)(b) were arrested, § 87(2)(b) walked into § 87(2)(b). Suddenly, he heard something being sprayed. When he turned around, he saw that an officer had dispensed pepper spray and that it had landed on § 87(2)(b) s eyes. As a result, § 87(2)(b) was not able to open her eyes completely. Some pepper spray also fell on other members of the crowd, who he could not identify.

Moments later, § 87(2)(b) s cousin § 87(2)(b) was trying to carry one of his family members, identified via the investigation as § 87(2)(b). An officer, identified via the investigation as PO Benitez, grabbed § 87(2)(b) brought him against wall, and slapped him twice.

Witness: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of the incident. He is a Hispanic man who is 5’8” tall and weighs 180 pounds. He has black hair and brown eyes.
- § 87(2)(b) is § 87(2)(b) s stepfather.

CCRB Statement

On September 9, 2013, § 87(2)(b) was interviewed at the CCRB (encl. C31 – C34). § 87(2)(g) Only additions and exceptions are noted below.

When the additional officers arrived on the scene, PO Benitez put on his gloves and dispensed pepper spray against the crowd. Pepper spray landed in § 87(2)(b)'s eyes. A small amount of pepper spray also landed on § 87(2)(b). § 87(2)(b) later told § 87(2)(b) that an officer slapped him, but did not specify which officer did so. § 87(2)(b) did not see an officer slap § 87(2)(b) during the incident because § 87(2)(b) was not in his field of view.

Attempts to Contact Civilians

§ 87(2)(b) § 87(2)(b) identified § 87(2)(b) as a witness in this case and provided her address and her home and mobile numbers to the CCRB. Between November 6, 2013 and November 20, 2013, § 87(2)(b) missed two appointments without prior notification to cancel or reschedule. To date, § 87(2)(b) has not called the CCRB to reschedule her missed appointments despite being called seven times and being sent three letters between October 2, 2013 and November 20, 2013.

§ 87(2)(b) A search of the LexisNexis database conducted on March 21, 2014 revealed that § 87(2)(b) and his wife § 87(2)(b) live in the same residence. The search did not yield any results for § 87(2)(b) phone number. Between March 21, 2014 and March 28, 2014, two letters were mailed to § 87(2)(b) none of which have been returned to the CCRB by the United States Postal Service. To date, § 87(2)(b) has not contacted the CCRB regarding this complaint.

NYPD Statements

Subject Officer: PO WILFREDO BENITEZ

- *PO Benitez was § 87(2)(b) old at the time of the incident. He is a Hispanic man who is 5'9" tall and weighs 205 pounds. He has black hair and brown eyes.*
- *PO Benitez worked from 9:30 p.m. on June 28, 2013 to 6:05 a.m. on June 29, 2013. He was assigned to the Conditions Unit alongside PO Ramon Melendez in marked RMP 3968.*

Criminal Complaint Report § 87(2)(b)

PO Benitez completed the Criminal Court Complaint Report for this incident (encl. D1 – D2), in which he states: “At time and place of occurrence while trying to disperse a large group defendant 1 and 2 were instigating and influencing the crowd by telling them not to leave. While trying to apprehend defendant, defendant 1 (male) and defendant 2 (female) did intervene by trying to deter police officer from making a lawful arrest. While trying arrest defendant 2 (female) did flail her arms turned around and struck officer in the face with closed fist causing pain.”

Arrest Report § 87(2)(b)

PO Benitez completed the arrest report for § 87(2)(b)'s arrest (encl. D3 – D5), in which he states: “At time and place of occurrence while trying to disperse a large group, defendant did instigate and influence the crowd by telling them not to leave. While trying to apprehend defendant, defendant did flail her arms and turned around and struck officer in the face with closed fist causing pain. Defendant did get involved when PO was arresting second person

trying to stop PO from making a lawful arrest.” According to the report, force was used during the apprehension.

Arrest Report § 87(2)(b)

PO Benitez completed the arrest report for § 87(2)(b) (encl. D6 – D8), in which he stated: “§ 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

” According to the report, force was not used during the apprehension.

Memo Book

PO Benitez’s memo book notes verbatim, “0110: Observed a group of 25 to 30 people congregated on the sidewalk in front of building listening to loud speakers, smoking hookah, and drinking alcohol. After giving them multiple orders to clear the block. Defendant who we ID by § 87(2)(b) and § 87(2)(b) were instigating crowd to not to leave. After 5 – 10 minutes while trying to apprehend § 87(2)(b) defendant § 87(2)(b) intervened and while trying to place her under arrest she resisted striking me on the right side of my face. 0123: 10-92 x2. 0140: 10-84 at the stationhouse. 0215: Same crowd from the incident location came to the precinct and were instructed to leave. 0230: Arrest processing 61 # § 87(2)(b) OLBS # § 87(2)(b) § 87(2)(b) § 87(2)(b) – § 87(2)(b) 0330: Fingerprint. 0430: Voucher arrest evidence § 87(2)(b) – speaker § 87(2)(b) – hookah. 0530: Vouchering safekeeping” (encl. D9 – D12).

CCRB Statement

On December 20, 2013, PO Benitez was interviewed at the CCRB (encl. D13 – D15).

On June 29, 2013, at approximately 1:23 a.m., PO Benitez and PO Melendez were driving north on University Avenue, in the vicinity of West 168th Street and University Avenue, in the Bronx.

As they drove, PO Benitez and PO Melendez observed a group of twenty-five to thirty people gathered on the sidewalk in front of § 87(2)(b). The group was sitting on chairs, blocking access to the sidewalk, smoking hookah, drinking alcohol, and listening to loud music. Several alcohol bottles were scattered on the ground.

PO Benitez and PO Melendez parked their RMP. Subsequently, they went over the loudspeaker and told the crowd to disperse several times. PO Benitez told the crowd three to four times to disperse. The crowd was told to disperse because they were listening to loud music and smoking hookah late at night. When asked if it was against the law to listen to loud music and smoke hookah late at night, PO Benitez stated that they have to address even minor conditions in their assigned sectors, such as the ones observed in this case.

In Spanish, § 87(2)(b) stated that they were not leaving because they knew their rights. § 87(2)(b) continuously incited the crowd by telling them not to leave. Because PO Benitez and PO Melendez were outnumbered by the crowd, they called for additional officers and remained in their RMP.

As PO Benitez and PO Melendez waited for backup, § 87(2)(b) approached the RMP two to three times. PO Melendez told her to back away from the RMP. PO Benitez did not interact with § 87(2)(b) when she approached the car. PO Benitez did not know if any other civilians approached the RMP. PO Benitez did not tell anyone who was approaching the RMP, “Get the fuck away from the car.” Neither PO Benitez nor PO Melendez used the expletive “fuck” against any civilian.

After five to ten minutes, approximately ten additional officers from the 44th Precinct arrived on the scene, including PO Kenneth Hines. PO Benitez was not able to identify any other officers who were on the scene.

When the additional officers arrived, PO Benitez and PO Melendez exited the RMP. All of the officers told the members of the crowd to disperse. The request was made over ten times. However, the crowd became more hostile when the additional officers arrived – the people yelled that they were not leaving. Some of the individuals went into the apartment but returned outside shortly after.

§ 87(2)(b) told the crowd not to leave. § 87(2)(b) and § 87(2)(b)'s breath smelled like alcohol, which coupled with their behavior (i.e., inciting the crowd) led PO Benitez to believe that they were intoxicated.

PO Benitez tried to place § 87(2)(b) under arrest, but he flailed his arms. In order to overcome § 87(2)(b)'s resistance, PO Benitez and the officers who were assisting him, who he could not identify, grabbed § 87(2)(b)'s hands and handcuffed him.

§ 87(2)(b) placed herself between § 87(2)(b) and the officers who were trying to arrest him in an attempt to prevent § 87(2)(b)'s arrest. She pushed PO Benitez and the other officers away from § 87(2)(b). As a result, PO Benitez and other officers tried arrest § 87(2)(b) for obstructing governmental administration. § 87(2)(b) flailed her arms, turned around and slapped PO Benitez on the right side of his face. PO Benitez did not go line of duty for the injury he sustained from § 87(2)(b)'s slap – he only applied an ice pack on his face after the incident.

PO Benitez and other officers overcame § 87(2)(b)'s resistance by grabbing her arms and placed them toward her back to handcuff her. No other force was used to apprehend § 87(2)(b). § 87(2)(b) did not complain of any injuries or request medical attention during the incident.

Members of the crowd attempted to intervene in § 87(2)(b)'s arrest – they repeatedly asked officers why § 87(2)(b) was being arrested and approached those officers. As a result, officers stood around § 87(2)(b) to prevent people from reaching her. PO Benitez did not see if any of those officers had physical interaction with the crowd. Member of the crowd used profanity against the officers and yelled, “Fuck you, cops!” One of the men from the crowd tried to throw an umbrella at PO Hines but missed.

After § 87(2)(b) was handcuffed, PO Benitez did not interact with anyone else from the group. PO Benitez did not recall if pepper spray was used during the incident. He did not take out his pepper spray canister and did not see any other officers hold any pepper spray canisters.

§ 87(2)(b) and § 87(2)(b) were transported to the 44th Precinct stationhouse. Shortly thereafter, members of the group arrived at the stationhouse. They yelled and cursed at the officers. PO Benitez ordered them to leave the stationhouse. Initially, they refused to leave, but eventually they exited the stationhouse.

Upon presenting with PO Benitez with a photograph of § 87(2)(b) he did not recognize him. PO Benitez did not interact with § 87(2)(b) during the incident. PO Benitez did not push § 87(2)(b) or any civilians against the wall and he did not see PO Melendez do so. He did not tell any civilian, “Get the fuck out of the way!” He did not punch, slap, or otherwise strike any civilians.

Video Commentary

PO Benitez was presented with the video footage that § 87(2)(b) of the incident. At 00:03, PO Benitez identified himself as the officer on the left-hand side and identified the officer on the right-hand side as PO Hines. After reviewing the video, PO Benitez stated that, as depicted in the video, PO Hines asked PO Benitez for his pepper spray canister and PO Benitez provided it. PO Benitez did not see PO Hines use the pepper spray. PO Benitez did not know why PO Hines asked him for his pepper spray. At 00:05, PO Benitez was not able to identify the officer who was on the screen, but stated that it might be PO Melendez.

Witness Officer: PO RAMON MELENDEZ

- *PO Melendez was § 87(2)(b) old at the time of the incident. He is a Hispanic man who is 5'5" tall and weighs 165 pounds. He has black hair and brown eyes.*
- *PO Melendez worked in uniform from 9:30 p.m. on June 28, 2013 to 6:05 a.m. on June 29, 2013. He was assigned to the 44th Precinct's Conditions Unit alongside PO Wilfredo Benitez in marked RMP 3968.*

Memo Book

PO Melendez's memo book notes verbatim, "0110: Pickup of disorderly group. West 168th Street and University 30 – 40 people. 0123: 2 under by PO Benitez. 0140: 10-84 stationhouse arrest process" (encl. D16 – D19).

CCRB Statement

On December 20, 2013, PO Melendez was interviewed at the CCRB (encl. D20 – D22).

§ 87(2)(g) Only additions and exceptions are noted below.

After § 87(2)(b) was arrested, as they walked him to the RMP, § 87(2)(b) grabbed PO Benitez's shoulder and his back and began pulling him away from § 87(2)(b). § 87(2)(b) was arrested by unidentified officers for intervening in § 87(2)(b)'s arrest.

After § 87(2)(b) was placed in the RMP, PO Melendez did not have any interaction with any civilians. PO Melendez and the other officers continued to try to disperse the crowd. Shortly thereafter, the crowd dispersed. PO Melendez did not see any officer hold his or her pepper spray canister and did not see any officer use pepper spray.

PO Melendez and PO Benitez returned to the 44th Precinct stationhouse. Other than those who were arrested, PO Melendez did not see any of the individuals who were on the scene at the stationhouse.

PO Melendez did not hear PO Benitez state, "Get the fuck out of the way" or "Get the fuck away from the car." He did not hear him say, "Shut the fuck up: I can arrest you." PO Melendez did not hear PO Benitez use the expletive "fuck," or any other profanities, toward any civilians. PO Melendez did not see PO Benitez interact with § 87(2)(b). Specifically, he did not see PO Benitez push § 87(2)(b) against a wall or slap him.

Video Commentary

PO Melendez reviewed the video that was recorded by § 87(2)(b). He identified the officer on the screen at 00:01 as himself. He stated that, in the video, he had his pepper spray canister in his hand. At that time, he recalled that, after § 87(2)(b) and § 87(2)(b) were arrested, individuals from the crowd began charging at the officers with items in their hands. In response, PO Melendez took out his pepper spray canister and tried to dispense his pepper spray. However, he was unable to because his canister was empty. He did not recall if any officers used pepper spray. He identified the officers on the frame at 00:05 as PO Benitez (left-hand) and PO Hines (right-hand).

Subject Officer: PO KENNETH HINES

- *PO Hines was § 87(2)(b) old. He is a black man who is 5'8" tall and weighs 220 pounds. He has black hair and brown eyes.*
- *PO Hines worked from 9:30 p.m. on June 28, 2013 to 6:05 a.m. on June 29, 2013. He was assigned to the 44th Precinct's Conditions Unit. He did not recall who his partner was at the time of the incident.*

Memo Book

PO Hines did not produce his memo book during his CCRB interview (encl. D23 – D25). On the date of his interview, February 6, 2014, PO Hines faxed a copy of his memo book to the CCRB. PO Hines' memo book does not contain any entries related to this incident.

CCRB Statement

On February 6, 2014, PO Hines was interviewed at the CCRB (encl. D26 – D28).

On June 20, 2013, at approximately 1:23 a.m., PO Hines and his partner received a request for backup from PO Benitez and PO Melendez at West 168th Street and University Avenue in the Bronx. During his CCRB interview, PO Hines was not able to recall who his partner on the incident date.

When PO Hines and his partner arrived on the scene, more than twenty people were gathered on the sidewalk. PO Benitez, PO Melendez, PO Hines, and PO Hines' partner were the only officers who were on the scene when PO Hines arrived.

PO Benitez and PO Melendez arrested a woman, identified via the investigation as § 87(2)(b) and they called for assistance for the apprehension. PO Hines did not assist in the arrest: his only role was trying to disperse the large crowd.

As PO Benitez and PO Melendez tried to arrest § 87(2)(b) the crowd became more belligerent: they tried to approach § 87(2)(b) they cursed at the officers, and some individuals began picking up items. Specifically, one young man, identified via the investigation as § 87(2)(b) grabbed an umbrella and held it in the air and a young child grabbed a scooter and held it in the air. PO Hines pushed the child with the scooter into the sidewalk so that he would not throw the scooter.

§ 87(2)(b) was placed in a police van. Additional officers arrived on the scene. However, PO Hines was not able to identify any of those officers or approximate how many of them arrived. Suddenly, the crowd closed in on the officers and continued to curse at them. PO Hines told the crowd over ten times, "Get back," and the other officers continuously told the crowd to disperse.

The individuals refused to listen to the officers and only continued to approach them. In response, PO Hines took out his pepper spray canister and attempted to deploy his pepper spray. However, his canister was empty. As a result, PO Hines borrowed PO Benitez's pepper spray. PO Hines dispensed the pepper spray in the air for one to two seconds. In response, the crowd dispersed.

PO Hines did not aim it at any civilians and it did not land on any of them. None of the civilians stated that the pepper spray landed on them. PO Hines did not see any other officers dispense any pepper spray. PO Hines did not observe any injuries on any civilians and none of them complained of any injuries.

PO Benitez and PO Melendez transported § 87(2)(b) to the 44th Precinct stationhouse. PO Hines resumed patrol. He did not see the civilians who were on the scene after the incident.

PO Hines was presented with photographs of § 87(2)(b) and § 87(2)(b). He did not recognize any of them, but he stated that § 87(2)(b) may have been the young man who was holding the umbrella.

PO Hines did not see any officer slam a civilian against a van. He did not see PO Benitez interact with any civilians other than § 87(2)(b). PO Benitez did not slap any civilians or push any of them against a wall. PO Benitez did not use any profanity. Specifically, he did not use the expletive "fuck." PO Benitez did not make the following remarks: "Get the fuck out the way," "Get the fuck away from the car;" "Shut the fuck up: I can arrest you."

Video Commentary

PO Hines was shown the video that was captured by § 87(2)(b) during the incident.

PO Hines identified the officer who appears at 00:01 as PO Melendez. He identified the officers who appear at 00:03 as himself (right-hand side) and PO Benitez (left-hand) side. At

00:09, PO Benitez passes PO Hines his pepper spray canister. Between 00:15 – 00:16, PO Hines dispensed the pepper spray.

Witness Officer: SERGEANT SHAUN GARRETT

- *Sgt. Garrett was § 87(2)(b) old at the time of the incident. He is an Asian man who is 6'1" tall and weighs 205 pounds. He has brown hair and brown eyes.*
- *Sgt. Garrett worked in uniform from 9:15 p.m. on June 28, 2013 to 6:12 a.m. on June 29, 2013 alongside PO Thomas Adams. He was the Conditions Unit Sergeant for the 44th Precinct and he was assigned to unmarked RMP 321, which is a black Chevy Impala.*

Memo Book

Sgt. Garrett's memo book notes verbatim, "0130: responded to 85 at 168 and University. 0200: 98 at scene" (encl. D29 – D31).

CCRB Statement

On February 21, 2014, Sgt. Garrett was interviewed at the CCRB (encl. D32 – D33).

On June 29, 2013, Sgt. Garrett and his partner, PO Thomas Adams, received a request for assistance with an arrest at West 168th Street and University in the Bronx. Sgt. Garrett did not recall which officers requested assistance.

When Sgt. Garrett arrived on the scene, it was "chaotic": over a dozen individuals, Hispanic men and women, were throwing lawn chairs at officers and alcohol bottles, hookah, and garbage was scattered on the ground. Sgt. Garrett did not recall how many officers were on the scene and he was unable to identify any of them. Sgt. Garrett did not recall if PO Benitez, PO Melendez, or PO Hines were on the scene.

Sgt. Garrett and the officers who were on the scene told the individuals to clear the block, but they refused. Individuals yelled and cursed at officers. Officers issued summonses to several individuals. Sgt. Garrett did not see any arrests and he did not assist in any arrests.

Sgt. Garrett did not recall seeing any physical interaction between officers and civilians. Specifically, he did not see an officer slap, punch, or push any civilians. None of the officers used any profanity. Sgt. Garrett did not recall if pepper spray was used.

After approximately five to ten minutes, the civilians entered a building. At that point, Sgt. Garrett told the officers to leave the scene. Sgt. Garrett did not immediately return to the 44th Precinct stationhouse after the incident. He returned to the stationhouse at 1:50 a.m. He did not recall if he saw any civilians who were on the scene at the stationhouse.

Sgt. Garrett was shown photographs of § 87(2)(b) and § 87(2)(b) but he did not recognize any of them. He was also presented with the arrest reports for the arrests of § 87(2)(b) and § 87(2)(b) as he is listed as the supervisor for their arrests. After reviewing the arrest reports, Sgt. Garrett did not recall supervising the arrests and he did not recall any additional details regarding the incident.

Video Commentary

Sgt. Garrett reviewed the video footage that was captured by § 87(2)(b) of the incident. He stated that the officer depicted at 00:01 may have been PO Melendez. He identified the officer who appears at 00:02 as PO Benitez.

NYPD Documents

SPRINT Report D13062901481

The SPRINT report generated for this incident (encl. E1) states that on June 19, 2013 at 1:12 a.m. additional officers were requested at West 168th Street and University Avenue in the Bronx. A few seconds later, officers arrived on the scene. Three people were arrested.

Command Log

The 44th Precinct Command Log for June 29, 2013, (encl. E13 – E20) notes that at 1:30 a.m., § 87(2)(b) and § 87(2)(b) arrived at the stationhouse. Their physical and mental conditions were listed as normal. At 5:45 a.m., § 87(2)(b) and § 87(2)(b) were transported to Bronx Central Booking.

Arrests for Incident and Disposition

- The disposition for case number § 87(2)(b) for § 87(2)(b)'s arrest, Arrest § 87(2)(b) is not available on Office of Court Administration records (encl. F21 – F24) or the eCourt database (encl. F47).
- Case number § 87(2)(b), § 87(2)(a) for § 87(2)(b)'s arrest, Arrest § 87(2)(b) was sealed on March 23, 2014 (encl. F38 – F39).

Status of Civil Proceedings

- As of March 13, 2014, which is five months past the 90-day filing deadline, a Notice of Claim has not been filed with the City of New York regarding this incident (encl. H20).

Civilians Criminal History

- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. A4).
- § 87(2)(b) and § 87(2)(b) have not filed any CCRB complaints (encl. A5 – A10).

Subject Officers CCRB History

- PO Benitez has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. A1).
- PO Hines has been a member of the service for eight years and there are no substantiated CCRB allegations against him (encl. A2 – A3).

Conclusion

Identification of Subject Officers

- PO Benitez and PO Hines acknowledged interacting with civilians at the incident location during the incident.

- § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Discourtesy: PO Wilfredo Benitez spoke rudely to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b)

§ 87(2)(b) alleged that PO Benitez told him, “Get the fuck away from the car.” § 87(2)(b) alleged that PO Benitez told § 87(2)(b) “Get that camera out my fucking face.” § 87(2)(b) alleged that, after PO Benitez pushed § 87(2)(b) “Get the fuck out the way – move, move!” § 87(2)(b) alleged that PO Benitez told § 87(2)(b) “Shut the fuck up – I can arrest you.”

PO Benitez denied the allegations. § 87(2)(b) PO Melendez, PO Hines, and Sgt. Garrett stated that PO Benitez did not use any profanity during the incident.

§ 87(2)(b) did not allege that PO Benitez used any discourteous words toward her. Additionally, PO Benitez could not have made the remarks § 87(2)(b) alleged he made toward § 87(2)(b) because he alleged that it was said after PO Benitez slapped § 87(2)(b). According to § 87(2)(b) after § 87(2)(b) was slapped, § 87(2)(b) told PO Benitez that § 87(2)(b) was a minor and, in response, PO Benitez told § 87(2)(b) “Shut the fuck up – I can arrest you.” However, according to every officer and every witness except § 87(2)(b) § 87(2)(b) s arrest was the first thing that occurred when the additional officers arrived on the scene. § 87(2)(b) was already handcuffed and placed in a van when this alleged remark was made. Furthermore, according to § 87(2)(b) his friend § 87(2)(b) was the one who told PO Benitez that § 87(2)(b) was a minor after the alleged slap.

§ 87(2)(g)

Allegation B – Force: PO Wilfredo Benitez used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Benitez pushed him against a wall and slapped him. PO Benitez denied the allegation. § 87(2)(b) s cousins § 87(2)(b) and § 87(2)(b) stated that PO Benitez pushed and slapped § 87(2)(b) PO Melendez, PO Hines, and Sgt. Garrett stated that they did not witness PO Benitez commit the alleged misconduct.

§ 87(2)(g)

Allegation C – Force: PO Kenneth Hines used pepper spray against § 87(2)(b) and § 87(2)(b)

Although there are discrepancies among the civilian statements regarding which officer used pepper spray during the incident, PO Hines admitted dispensing pepper spray. § 87(2)(g)

§ 87(2)(g)

It is undisputed that the civilians refused to disperse after officers gave them numerous commands to do so. Furthermore, as shown in the video that was captured by § 87(2)(b) members of the crowd were yelling and using profanity toward the officers. The video shows that the individuals refused to disperse even after told to do so several times and that they only dispersed once the pepper spray was used.

NYPD Patrol Guide Procedure 212-95 states that pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance (encl. AA1 – AA4).

§ 87(2)(g)

Allegation D – Force: An officer used pepper spray against § 87(2)(b)

§ 87(2)(b) alleged that an officer used pepper spray against § 87(2)(b) § 87(2)(b) described that officer as a white man who is 32 years old with a muscular build and straight black hair, who is approximately 6’4” tall and was dressed in uniform. None of the witnesses alleged that an officer used pepper spray against § 87(2)(b)

Contact attempts were exhausted to § 87(2)(b) However, to date, he has not contacted the CCRB regarding this complaint. Additionally, none of the letters that were mailed to him were returned to the CCRB by the United States Postal Service.

§ 87(2)(g)

Allegation E – Discourtesy: An officer spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that the officer who used pepper spray against § 87(2)(b) told § 87(2)(b) “You little tough guy; you little bitch.” However, § 87(2)(b) did not make this allegation and it is not corroborated by any of the witnesses or officers who were interviewed.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date